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CF0000064400

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Cri. Appeal No. 1523 / 2000.

1. Pila Ram s/o Bhagchand @ Mandhar Ghadwa Adiwashi aged about 32 years, occupation-Labour.

2. MANDHAR s/o Pardeshi Ghadwa, aged about 53 years,

Both resident of village Mawli Bhata, P.S. Kodenar district Jagdalpur ----Appellants.

Accused.

versus.

The State of M.P.
through P.S Kodenar,
Jagdalpur ---------- Respondent.

conviction	sentence.
Appellant No.1 u/s 302 IPC	- Imprisonment for life and fine of Rs.500/- in default imprisonment for 1 year.
Appellant No.2 U/s 304 Part II IPC-	R.I for 5 years.

Appeal under section 374 of Cr.P.C against the conviction and sentence passed by IInd Additional Sessions Judge Bastar -Jagdalpur Shri Yogesh Mathur passed on 1/4/2000 in S.T.No.268/99, arising out in criminal case No.191/99.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH HON. SHRI L.C. BHADOO AND HON. SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 1523 of 2000

Appellants : Pila Ram and another

Versus

Respondent : State of M.P.

Present

Mr. S.S. Rajput, counsel for the appellant.
Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

ORAL JUDGMENT
(19.12.2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 1.4.2000 passed by II Additional Sessions Judge, Bastar in S.T. No. 268/99 whereby the learned Additional Sessions Judge after holding accused Pila Ram guilty for commission of the offence under Section 302 of the I.P.C., sentenced him to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergo imprisonment for life and pay a fine of Rs. 500/-, in default of payment of fine to further undergo imprisonment for one year. However, co-accused Mandhar was convicted under Section 304-II of the I.P.C. and sentenced to undergo five years rigorous imprisonment.

During pendency of this appeal appellant No. 2 Mandhar has already been released on completion of sentence on 5.8.2002, therefore, none appears on his behalf.

2. Case of the prosecution, in brief, is that Raimati @ Somari (PW-1) gave Merg intimation (Ex.P/7) to the Police Station – Kodenar on 22.5.1999 to the effect that since last four years Muktibai is residing with Pila Ram as his wife. Pila Ram used to quarrel and beat her, therefore, she used to come to her house. One month before accused again gave beating to Muktibai, therefore, she came to her house. On 20th May 1999, Pila Ram and his father Mandhar came to her house and took her husband Banwa to the market of Kodenar. When they were returning from the market, Pila Ram by axe and Mandhar by club attacked Banwa and committed his murder. The crime was witnessed by Kanya Madiya. On 21.5.1999 Panchayat was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	convened in the village. Receiving this Merg intimation First Information Report (Ex.P/1) was registered. The investigating officer left for the scene of occurrence and prepared inquest report (Ex.P/2) of the dead body of Banwa. Plain and bloodstained soil from the place of occurrence was taken into possession under Ex.P/3. While in police custody accused Pila Ram gave memorandum (Ex.P/4) in connection with the axe and in pursuance of that, axe was got recovered under Ex.P/5. Lungi of accused Pila Ram was taken into possession under Ex.P/6. Site plan (Ex.P/8) of the place of occurrence was prepared. Body of deceased Banwa was sent for postmortem examination to Primary Health Center, Bade Kilepal where Dr. Lakhan Jury (PW-8) conducted postmortem and prepared the postmortem report (Ex.P/17). He opined that the cause of death is head injury and coma due to lacerated wound over skull. After usual investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Jagdalpur who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, received the case on transfer for trial.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3. Prosecution in order to establish the charge against the accused persons examined eight witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

4. We have heard Mr. S.S. Rajput, learned counsel appearing on behalf of the appellant and Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

5. Mr. Rajput has not disputed the homicidal death of Banwa. Apart from that, from the evidence of PW-3 Podyamikariya, the eyewitness who saw the accused persons attacking deceased Banwa with axe and club as also from the medical evidence of Dr. Lakhan Jury (PW-8) who conducted postmortem on the body of deceased Banwa and stated that there was a lacerated wound on the left temporal region in the size of 4 x 3 x 4 inch, there were four contusions on the back and the temporal bone beneath injury No. 1 was fractured, membrane was ruptured and brain material was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

coming out the skull, it is established the death of Banwa was homicidal in nature.

6. As far as involvement of the accused/appellant in crime in question is concerned, the conviction rests on the evidence of PW-3 Podyamikariya, the eyewitness of the incident and the extra judicial confessions made by the accused before PW-1 Raimati, PW-4 Muktibai and PW-5 Liti.

7. Mr. Rajput argued that the evidence of PW-3 Podyamikariya does not inspire confidence because in his evidence, he has stated that when he saw the accused persons attacking the deceased, he ran away from there and did not go towards the place of incident, therefore, his conduct was unnatural as he did not disclose this fact to anybody in the village and it was disclosed only on the next day before the Panchayat.

8. We have perused the evidence of PW-3 Podyamikariya who has stated that on the fateful day at about 5.00 p.m. in the evening he was searching his missing cow, at that time he saw that accused Pila

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ram attacked Banwaram with axe on his head as a result of which Banwaram fell down and thereafter, Pila Ram with axe and accused Mandhar with club attacked Banwaram. He was frightened ,therefore, he left for his residence with his cow and did not disclose this fact to anybody in his house. He disclosed this fact in the Panchayat only. It is true that as per his evidence he did not disclose to anybody about the incident and even did not try to intervene when the accused persons were attacking the deceased, but mere not intervening or not going towards the place of occurrence itself, cannot be a ground to disbelieve the evidence of this witness because it depends upon person to person how he takes the things or how he reacts in such circumstances. Some persons try to intervene whereas some being scared choose to remain mute spectator, therefore, the above contention of counsel for the appellant cannot be taken as a ground to disbelieve the evidence of this witness .

9. As far as the question as to why this witness did not disclose about the incident to anybody on the date of incident itself, is concerned, it, of course, creates some doubt in the evidence of this

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

witness because in the ordinary course a person is expected to disclose such a heinous crime to someone but it also depends on the nature of the person and therefore, evidence of such person cannot be thrown away without scrutinizing the same on merit. In such a case the Court should scrutinize the evidence of such witness in a careful manner before placing reliance on the same. If we look into the evidence of PW-3 Podyamikariya , it comes on record that on the next day before the Panchayat he disclosed the fact that he witnessed the crime. Moreover, in the cross-examination of this witness the defence has not been able to elicit any circumstances which discredits the evidence of this witness because there is nothing on record to show that this witness was interested in deceased in any manner or had any animosity against the accused persons which prompted him to implicate them in such a heinous crime. The evidence of this witness has been further corroborated by the medical evidence of Dr. Lakhan Jury (PW-8) in which he has categorically stated that there was a lacerated wound on the head of the deceased, there were four contusions on the back, temporal bone beneath injury No. 1 was fractured, membrane was ruptured and brain material was coming out.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

His evidence also stands corroborated by the evidence of PW-1 Raimati, PW-4 Muktibai and PW-5 Liti, before whom the accused Pila Ram said to have made extra judicial confessions regarding commission of the crime by him. Therefore, there is no reason to disbelieve the evidence of PW-3 Podyamikariya.

10. Mr. Rajput also submitted that from the medical evidence only a lacerated wound was found on the head whereas the allegation against accused Pila Ram is that he attacked the deceased with axe, therefore, in all probabilities the injury must be of the nature of incised wound. In the first instance, it is not necessary that the injury inflicted on the head by the accused in all probability must be of the nature of incised wound, moreover, on account of the injury inflicted by axe, the temporal bone was fractured and there was a cut wound on account of which brain material also came out of the skull. However, in order to ascertain that lacerated wound cannot be caused by axe, the defence ought to have cross-examined the doctor on this aspect whereas there is no such cross-examination by the defence at all. Thus we do not

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

find any substance in the above submission of counsel for the accused/appellant.

11. Mr. Rajput also argued that in the cross-examination of PW-3 Podyamikariya, this witness has stated that he witnessed the incident from a distance of 200 meter, therefore, it was not possible for him to see accused assaulting the deceased with axe from such a long distance. However, again we are not inclined to accept this argument for the reason that in the first instance the distance given by this witness is merely an estimation that it was 200 meter. Moreover, it was the month of May when the incident occurred, the time of the incident was about 5.00 p.m. and admittedly there was sufficient sunlight at that time, therefore, it cannot be said that this witness did not witness the crime in question from such a distance. Nothing has come on record in the cross-examination of this witness, that there was any obstruction between the place where the incident occurred and this witness saw the same. Therefore, the Court below has rightly placed reliance on the evidence of PW-3 Podyamikariya in convicting the accused for commission of the crime in question.

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आदेश पत्रक (पूर्वानुबद्ध)

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12. Now we shall deal with the alleged extrajudicial confession said to have been made by the accused before PW-1 Raimati, this witness has stated that Mukti was her mother-in-law and she was married to accused Pila Ram. Muktibai has already children from her first husband. On Wednesday Pilaram and Mandhar came to her house when she was cooking the meal. On Thursday Pilaram and Mandhar took her husband to Kodenar market. When they returned, she asked them the whereabouts of her husband whereupon they replied that her husband is in the market but in the night her husband did not return to the house. Thereafter, they made search for him. She has stated that Pila Ram disclosed that he has committed the murder of her husband with axe and his body is lying near the Bhainlwa bush. He disclosed to her that Mandhar attacked her husband with club. However, this witness has not been cross-examination on the aspect of extrajudicial confession made by the accused before this witness that Pila Ram and Mandhar had not taken her husband to the market or that Pila has not made any extrajudicial confession before her. PW-4 Muktibai has also stated that Pila took her forcibly and kept her as his wife,

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आदेश पत्रक (पूर्वानुबद्ध)

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deceased Banwaram was his brother. When she came to her parents' house accused tried to take her forcibly to his house and Pila disclosed to her that he has committed the murder of his brother with axe. As the accused kept this lady for quite some time as his wife and on account of the quarrel between the two, she returned to her brother's house, the accused wanted to take her back again forcibly but she did not oblige the accused, therefore, this lady was known to the accused as she remained with him for quite some time as his wife, as such, there is every possibility of making confession before this witness by the accused. Similarly, the defence has not cross-examined this witness on the point that accused made extra judicial confession before her. Similar is the evidence of PW-5 Liti. Therefore, there is nothing on record to show that the extrajudicial confession made before these witnesses was not voluntary or true rather the extrajudicial confession made before them is corroborated by the evidence of PW-3 Podyamikariya who witnessed the crime. Thus the evidence of all these witnesses regarding extrajudicial confession made by the accused, inspire confidence of the Court.

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आदेश पत्रक (पूर्वानुबद्ध)

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13. For the foregoing reasons, we do not find any illegality or infirmity in the finding of the trial Court convicting the accused Pila Ram under Section 302 of the IPC for causing fatal injury to deceased Banwaram with the help of axe on his head which ultimately resulted in his death. Therefore, the argument of counsel for the appellant that Mandhar has also attacked the deceased with club, as such no definite finding can be given that it was accused Pila Ram who was responsible for committing the murder of Banwaram is not acceptable as the accused Pila Ram assaulted the deceased with axe on his head and to that effect there is a clear and cogent evidence of eyewitness PW-3 Podyamikariya and the evidence of PW-1 Raimati before whom Pila Ram made extrajudicial confession. The accused Mandhar also attacked the deceased with club which was witnessed by PW-3 Podyamikariya, therefore, the appeal of Mandhar has also no merit.

14. In the result, the appeal being devoid of substance is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.